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August 22, 1997

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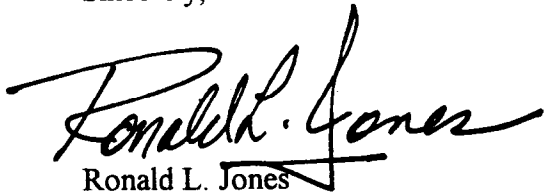
Dear Sir or Madam:

The American Petroleum Institute (API), the Independent Petroleum Association of America (IPAA), the Offshore Operator's Committee (OOC), and the National Ocean Industries Association (NOIA) have joined together to submit comments on the Minerals Management Service's proposed rule entitled "Oil Spill Financial Responsibility for Offshore Facilities," 62 Fed. Reg. 14052 (March 25, 1997). As trade associations representing hundreds of companies engaged in every aspect of the petroleum industry, including exploration, production and transportation of oil and natural gas in the coastal areas and on the Outer Continental Shelf, our members will be significantly affected by the outcome of this rulemaking.

We appreciate the efforts of MMS to hold a public workshop on this rulemaking on June 5 to allow industry to better understand MMS' rationale for certain aspects of the rule. We believe that major portions of the rule need to be reworked, with substantial consideration given to the way that operations are conducted and interest transfers made in the covered areas. Because major portions of the rule may change, we suggest that MMS consider re-proposing the rule, rather than moving from the current proposal to a final rule. This would provide us with additional opportunity to work with MMS to assure that the rule meets the Oil Pollution Act requirements for financial responsibility without posing an undue burden on industry that could potentially limit the development of our offshore oil and gas resources.

As MMS moves forward with the rule, we would like to provide information to assist MMS in devising a rule that reflects current operational situations. We appreciate this opportunity to provide formal comments on the proposed rule, and hope to continue working with MMS as you move toward finalizing a rule. If you have any questions about these comments, please contact Glenda Smith of API (202/682-8317) or Ben Dillon of IPAA (202/857-4722).

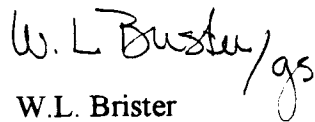
Sincerely,



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Enclosure

**Comments of the American Petroleum Institute, the Independent Petroleum
Association of America, the Offshore Operators Committee, and
the National Ocean Industries Association**

on

**Minerals Management Service's Proposed Rule
"Oil Spill Financial Responsibility For Offshore Facilities"**

62 Federal Register 14052 (March 25, 1997)

**Submitted to the Minerals Management Service ("MMS")
August 22, 1997**

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Association of America, the Offshore Operators' Committee and
the National Ocean Industries Association on
Minerals Management Service's Proposed Rule
"Oil Spill Financial Responsibility For Offshore Facilities"
62 Fed. Reg. 14052 (March 25, 1997)**

The American Petroleum Institute ("API"), the Independent Petroleum Association of America ("IPAA"), the Offshore Operators' Committee ("OOC"), and the National Ocean Industries Association ("NOIA") (hereinafter "Industry") appreciate the opportunity to comment on the Minerals Management Service's proposed rule entitled "Oil Spill Financial Responsibility for Offshore Facilities," 62 Fed. Reg. 14052 (March 25, 1997). As trade associations representing hundreds of companies engaged in every aspect of the petroleum industry, including exploration, production and transportation of oil and natural gas in the coastal areas and on the Outer Continental Shelf, our members will be significantly affected by the outcome of this rulemaking.

1. The Offshore Oil and Gas Industry Makes Major Contributions to the National Economy, and Has an Excellent Oil Spill Prevention Record

A. Economic Contributions

The Minerals Management Service ("MMS") is uniquely qualified to implement the provisions of the Oil Pollution Act ("OPA") relating to the establishment and maintenance of evidence of financial responsibility for offshore facilities. The MMS occupies a strategic position regarding the management of the nation's energy resources. As the Administrator for development of the mineral resources of the Outer Continental Shelf, the MMS has consistently discharged the statutory duty under the Outer Continental Shelf Lands Act to conserve and

prevent the waste of those vital resources. It can and should continue to do so in formulating a regulatory scheme implementing the financial responsibility requirements of OPA.

The proposed OSFR amount of up to \$150 million for the continental shelf is a large increase from the existing \$35 million, and small coastal operators will be facing OSFR amounts of up to \$10 million for the first time. Unless appropriate implementing regulations are developed, these increases are certain to have significant adverse consequences on many of the positive contributions made to this nation by the marine oil and gas industry. The MMS' own statistics reveal that in 1995, more than seventeen percent of U.S. crude oil and condensate production and more than twenty-three percent of U.S. natural gas production was from federal offshore waters. Moreover, in 1995 state waters contributed over three percent of U.S. oil and natural gas production. Since the inception of the OCS leasing program in 1954, payments to the U.S. Treasury under OCS leases have totaled more than \$109 billion, an amount exceeded only by federal income tax revenue. Unworkable or burdensome regulations could hinder production from these offshore and coastal areas, thus increasing U.S. reliance on foreign exports. Offshore and coastal oil and gas production and transportation are critical components of the U.S. domestic economic and energy base, and industry and the MMS should continue to work constructively to promote the strength of this important national resource.

B. Spill Prevention Record of Offshore Industry Operations

According to MMS' most recent data, over the past twenty years the amount of oil discharged by OCS operations has decreased. Much of this excellent record can be attributed to the MMS' own effective spill prevention and emergency response regulations. Specifically, offshore exploration and production facilities incorporate design features such as blowout

preventers, subsea well safety valves, redundant safety devices, pipeline shutdown systems and automatic "fail-safe" shut-in systems to minimize the potential for a spill from exploration and production (E&P) operations to assume catastrophic proportions. Proper function and operation of this equipment is assured by aggressive industry safety programs and by MMS inspection and mandatory maintenance programs. If, despite these proven safety systems, a spill occurs, response preparedness is achieved through comprehensive contingency planning and an extensive network of oil spill response organizations and service companies, coupled with an operator certification that sufficient personnel and equipment are available to respond to a "worst case discharge."

Industry has been fully involved in this rulemaking, including active participation by numerous company representatives at MMS' workshop held on June 5, 1997. At the workshop, the agency stated that its goals for the rulemaking were: (1) administrative efficiency; and (2) complete coverage of facilities within the agency's OSFR jurisdiction. Industry submits that the following comments will assist the MMS in achieving those goals, and will also reduce the administrative burden on the MMS and on the regulated community.

Before addressing substantive issues, Industry would note that in the past, the industry group regulated by the MMS has generally been limited to oil and gas producers on federal leases. The agency has developed an efficient system of communication with these entities, including, in addition to the Federal Register, the distribution of Notices to Lessees (NTLs) and Letters to Lessees (LTLs). Oil and gas producers on federal lands are fully familiar with the MMS system of communication, and know to look for and rely on these NTLs and LTLs.

For the purpose of these OSFR regulations, however, the agency's jurisdiction has been extended to two new groups — lessees of coastal, non-federal lands, and operators of petroleum pipelines on certain non-federal submerged lands.¹ Neither group is fully familiar with MMS procedures or communications. The agency should consider holding additional workshops in venues where coastal oil and gas operators and pipeline operators are likely to attend. Further, the Industry trade associations submitting these comments will be pleased to work with our members and other trade associations to facilitate communications with this newly regulated group.

2. The “Designated Applicant” Concept is Unworkable and Should Be Modified; Sections 253.2 and 253.11

The Agency proposes to introduce the concept of the “designated applicant,” and, under proposed section 253.11, would require that every lease, permit or right of use and easement (RUE) with a covered offshore facility (COF) must have a single designated applicant. Industry believes that this requirement is unworkable, adds confusion, and is unnecessary for the efficient administration of the rule.

A. Summary of the Concept

Under the MMS proposal, “every lease, permit or RUE” would have only one person who demonstrates oil spill financial responsibility (OSFR), and that person would be the designated

¹ The language in the proposed rule could be interpreted to include terminals. Industry understands, from MMS comments at the June 5 workshop, that MMS does not intend for this rule to cover terminals and requests that this be clarified in the final rule.

applicant. Further, the designated applicant is required to submit Form MMS 1016 and agree to demonstrate OSFR on behalf of all the responsible parties for the lease, permit, or RUE. If the designated applicant is not a responsible party, it must agree to be liable for oil pollution damages, cleanup costs, and other claims under OPA jointly and severally with the responsible parties. MMS states that its “intent is that the responsible parties agree who the one designated applicant should be on their behalf. MMS also wants that person to be liable for any damages or other claims so a claimant or the Oil Spill Liability Trust Fund (the Fund) does not have to pursue anyone other than the person who agreed to be the designated applicant. Of course, the other responsible parties still remain liable if the designated applicant does not satisfy the liability.” 62 Fed. Reg. 14054.

B. Industry’s Proposed Modifications

By creating the separate “designated applicant” scheme, the MMS is ignoring the long history of operations under the existing oil spill financial responsibility regulatory regime. These industry commenters are unaware of any support in the regulated community for the designated applicant arrangement, and, to the contrary, foresee considerable potential for confusion and operational delay. MMS has established procedures for recognizing different operators for different facilities on the same lease. Under current OSFR requirements, a single demonstration for each lease is not required; multiple demonstrations are allowed for different facilities on the lease. This scheme should be preserved under the new OSFR rule.

Industry is particularly concerned that the agency has misjudged the willingness of lessees and operators to assume liabilities that they would not otherwise incur. Industry believes that it is highly unlikely that a responsible party who is not a lessee or operator of record will agree to

demonstrate OSFR. Further, Industry believes that it is even more unlikely that a third party that is not even a responsible party will agree to demonstrate OSFR, and also agree to be liable jointly and severally for claims under OPA with the responsible parties. In this regard, it must be borne in mind that although the maximum OSFR that must be evidenced is limited to \$150 million, the liability of a responsible party is not so limited, and the party agreeing to serve as the designated applicant would effectively agree to take on the unlimited liability of all of the responsible parties that it represents.

Industry submits that, instead of creating a separate cumbersome administrative scheme for OSFR, the MMS should take advantage of existing administrative procedures. The MMS now has an elaborate set of qualifications that each potential lessee must meet before that party is entitled to qualify as an OCS lessee. For example, each potential lessee must show that it meets all legal requirements to qualify as a lessee under 30 CFR § 256.35, and must also satisfy general bonding requirements set out in Sections 256.58, et seq. The MMS should work OSFR demonstration into appropriate existing administrative processes.

Further, the agency should eliminate the requirement to identify a separate “designated applicant” except in limited situations. In this regard, MMS should modify Section 253.11 to provide that:

- With respect to OCS leases, OSFR must be demonstrated by the lessee, the designated operator for the lease pursuant to 30 CFR § 250.8, or by the unit operator designated under a federally approved unit including the OCS lease;
- With respect to a state lease, OSFR must be demonstrated by the operator of record for the lease, or by the unit operator;

- With respect to a permit, OSFR must be demonstrated by the permittee;
- With respect to a RUE with a COF, OSFR must be demonstrated by the holder of the RUE, or, if there is a pipeline on the RUE, by the owner or operator of the pipeline.

To provide the desired flexibility, the rule could also provide that in the limited situations where the designated operator or the unit operator is not a lessee, then an “applicant” would be required to be designated. Because the designated operator is a lessee in most circumstances, this designated applicant provision would not frequently be called into play.

In conclusion, industry representatives have thoroughly reviewed the proposed rule, participated in the June 5 workshop, carefully reviewed the transcript of the workshop, and have extensively discussed the “designated applicant” scheme. Industry remains deeply concerned that the concept, as drafted, does not appropriately reflect current operational situations and will not work effectively. The group has presented in these comments some of the concerns that have been identified, but it is very difficult to express the full range of potential concerns without a clearer understanding of how the agency intends for the designated applicant scheme to work in specific circumstances. Industry strongly urges the MMS to devote more time and attention to the practical, day-to-day effects of this proposal under various operating arrangements that exist offshore,² and to subject the concept to rigorous “gaming” in a variety of hypothetical transactions to test its effectiveness, as well as the effectiveness of Industry’s suggested alternate

² For example, assignment of interest, sale of working interest in selected facilities or portion of leases, exploration farm-outs, contract operators, and other common operating circumstances should be evaluated.

scheme. Industry remains willing to furnish additional information that may be requested on this subject.

3. In Defining the Geographic Scope of “Offshore” Facilities, the Proposed Rule Exceeds Statutory Limits: Section 253.3

A. The Statutory Framework and Review of Proposed Provisions

In the 1996 Amendments to OPA 90 Section 2716, the Congress provided that “offshore facilities” should include those areas traditionally known as the “territorial seas” and the “ocean,” i.e., those areas “located seaward of the line of ordinary low water along that portion of the coast that is in direct contact with the open sea and the line marking the seaward limit of inland waters.” 33 U.S.C. § 2716(c)(1)(A)(i)(I).

In addition, the Congress provided that certain coastal areas would be covered, in particular, those “located in coastal inland waters, such as bays or estuaries, seaward of the line of ordinary low water along that portion of the coast that is not in direct contact with the open sea.” Id. at § (A)(i)(II).

The MMS has attempted to incorporate the intent of the statute in its proposed rule, but has missed the mark with regard to coastal areas. In the process, the MMS has made its proposed rule applicable to a far wider geographic area, and therefore to many more facilities, than Congress intended. In proposed 30 C.F.R. § 253.3, the agency defines *covered offshore facility* (COF) to mean “a facility . . . (2) that is located in the area along the coast that is affected by the tides and is submerged when free from disturbing influences or in the area offshore therefrom,” Proposed 30 C.F.R. § 253.3, 62 Fed. Reg. 14059.

In its preamble to the proposed rule, the MMS says this about its proposed definition:

“It is clear that OSFR regulations should apply to areas seaward of the coastline. It also seems clear that ‘coastal inland waters, such as bays and estuaries, seaward of the line of ordinary low water along that portion of the coast that is not in direct contact with the open sea’ lie landward of the coastline.”

62 Fed. Reg. 14054.

The agency admits, however, that “OPA does not define the extent of these coastal inland waters, and the record of Congress for the 1996 amendments to OPA offers no clarification or statement of intent.” Id. The agency concludes that, as a result, it is “afforded some discretion in determining the extent to which areas lying landward of the coastline should be covered by this proposed regulation.” Id. Industry responds that the MMS’ discretion to establish the extent of such areas is constrained by the plain language of the statute. Industry contends, and demonstrates in the following section, that this statutory plain language limits the geographic scope of “offshore” to a far smaller area than that claimed by the MMS in the proposed rule.

The broad reach of the MMS proposal is evidenced by the preamble:

“The first option for defining places landward of the coastline that are covered by the rule includes the submerged coastal areas subject to tidal influence. That is, if an area affected by the tide is normally submerged, even at low tide, it is seaward of the line of ordinary low water. As such, it is covered by the rule.”

62 Fed. Reg. 14054, col. 1.

Continuing its preamble comment, the agency states:

“The area covered by this option does not include large inland water bodies affected by the tides (e.g., the Great Salt Lake) because none lie along the coast. Likewise, small landlocked water bodies located along the coast are not included because they are not

affected by the tides. The area that is covered by this option includes coastal bays, river mouths to the extent there is tidal influence, and coastal wetlands that are submerged at low tide.”

Id.

B. The Proposed Rule Unlawfully Expands the Scope of Inland Waters Beyond the Statutory Definition

The proposed rule does not correctly capture the definition of “offshore” in the 1996 amendments. MMS’ proposal would expand the reach of the agency’s authority well beyond the limits imposed by the clear statutory language of the OPA. Particularly, MMS’ attempt to regulate facilities located in interior coastal areas that are merely “affected by the tides” ignores the inherent limitations imposed by (a) the illustrative phrase “such as bays or estuaries,” and (b) the use of the term “inland waters” in both (c)(1)(A)(i)(I) (“section I”) and (c)(1)(A)(i)(II) (“section II”). As demonstrated below, these references make it clear that the water bodies that the statutory scheme addresses are substantial water bodies having seaward boundaries that are “in direct contact with the open sea.” MMS’ proposal, in contrast, would unlawfully expand the agency’s authority to facilities that are located in interior coastal areas having only indirect contact with the open sea.

The statutory language contained in section II, “coastal inland waters, such as bays or estuaries,” is illustrative of the types of water bodies that Congress intended to regulate. Accordingly, MMS’ authority is limited to regulating facilities located in waters similar in nature to “bays or estuaries.” Further, that language must be interpreted *in pari materia* with section I, which addresses facilities located “seaward of the line of ordinary low water along that portion of the coast that is in direct contact with the open sea and the line marking the seaward limit of inland waters.” Because the term “inland waters” appears in both sections I and II, it is

appropriate to interpret the phrase “inland waters” in the same manner with respect to both section I and section II.

In a series of decisions relating to the Submerged Lands Act, 43 U.S.C. § § 1301 et seq. (the “SLA”), the United States Supreme Court has interpreted the term “inland waters,” as contained in the SLA definition of “coastline.” E.g., *United States v. Alaska*, 65 U.S.L.W. 4457, 1997 U.S. LEXIS 3865 (1997); *United States v. Louisiana*, 89 S. Ct. 773 (1969); *United States v. California*, 85 S. Ct. 1401 (1965). Significantly, the SLA definition of “coastline” which the Supreme Court has interpreted is *identical* to section I, quoted above. Moreover, the Supreme Court decisions pertain in large part to determining whether particular coastal waters constitute “bays,” and therefore whether such waters are “inland waters” for purposes of the SLA definition of “coastline.”

According to well-established Supreme Court precedent, the term “inland waters” is to be defined according to the Convention on the Territorial Sea and the Contiguous Zone (the “Convention”), ratified by the United States in 1961. E.g., *United States v. Louisiana, supra*; *United States v. California, supra*. The Convention contains numerous technical rules pertaining to the drawing of a “baseline” to determine where “inland waters” end and the “territorial sea” begins. Within this framework, a “bay” is defined as:

“a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.”

Relying on this definition, the Supreme Court has observed that “bays are indentations in the mainland.” *United States v. Louisiana*, 89 S. Ct. at 801 (emphasis omitted). According to the Convention and these Supreme Court precedents, a “bay” can fairly be described as a body of water the seaward limit of which constitutes the “coastline,” and which is itself, rather than the “coast,” in “direct contact with the open sea.”

The Convention does not expressly define “estuary.” However, the Supreme Court has observed that, regarding the determination of “inland waters,” “[a]n estuary of a river is treated in the same way as a bay.” *United States v. California*, 86 S. Ct. 607, 608 (1966). In addition, in *Phillips Petroleum Co. v. Mississippi*, 108 S. Ct. 791 (1988), the Court distinguished certain inland waters that are “subject to the ebb and flow of the tide,” from “oceans, bays or estuaries,” which, though also “subject to the ebb and flow,” are “part of the sea.” Also, traditional dictionary definitions support the conclusion that an “estuary” is that part of a river that, like a bay, comes into direct contact with the open sea. E.g., Random House (“that part of the mouth or lower course of a river in which the river’s current meets the sea’s tide”); Webster’s (“a water passage (as the mouth of a river) where the tide meets the current of a stream; an arm of the sea at the lower end of a river”). For these reasons, it is appropriate to conclude that “estuaries” are meant to include those waters that are different from “bays” because they involve a river flowing into the sea, but that are similar to “bays” in that they are directly in contact with the open sea.

It is clear that the phrase “inland waters” in section I refers to those waters the seaward boundary of which constitutes the “coastline” for purposes of the SLA. Simply on this basis alone, it is appropriate to conclude that the phrase “coastal inland waters” in section II is limited to bodies of water the seaward boundary of which is the “coastline” for purposes of the SLA.

This would necessarily exclude the interior waters in a coastal state that are “affected by the tides,” which MMS proposes to include, but which do not themselves come into “direct contact” with the open sea.

The accepted definitions of “bay” and “estuary” further support this interpretation. Both of these types of water bodies come in direct contact with the open sea. The illustrative use of “bays or estuaries,” therefore necessarily excludes water bodies which, though perhaps influenced by the tides, are not in “direct contact” with the open sea. Indeed, MMS’ proposal to define its authority according to the “effect of the tide” finds no support in Congress’ statutory grant of authority. Quite simply, the word “tide” does not appear in the statute. While the terms “low water mark” and “estuary” require resort to “tidal” concepts, that is no basis for giving MMS authority to extend the location of facilities subject to the Act into waters that are only “affected by the tide.”

C. Industry Opposes the Use of “Fifty Mile,” “Hundred Mile,” or Similar Geographic Bands

In addition to the proposed regulation, the preamble to the proposed rule set forth a second option for defining places landward of the coastline:

“A second option for defining places landward of the coastline that are covered by the rule includes the area affected by the tides lying between the coastline and a parallel line that is a fixed distance from the coastline. This band of coastal inland water does not change unless the adjudicated coastline changes. The band should be wide enough to cover the prominent coastal bays and estuaries. We believe an appropriate width is fifty to one hundred miles, although some may not consider locations one hundred miles inland to be ‘along the coast.’ ”

62 Fed. Reg. 14054.

The MMS sought comments on this “fixed band” option, and Industry responds that it is opposed to the use of this concept. As we have shown above, the statute constrains the agency to the geographic area described in the statute, and would not authorize the MMS to sweep in large areas that are outside of the described zone, as the “band” concept does.

4. The MMS Should Clarify Its Rule Regarding the Amount of OSFR That Must Be Demonstrated: Sections 253.13 and 253.14

Sections 253.13 and 253.14 of the proposed rule describe how much OSFR must be demonstrated by the operator. The amount of OSFR is tied to the “worst case oil spill discharge volume” for the COF. Questions have arisen, however, regarding the calculation of the “worst-case oil spill discharge volume”, and this issue is causing considerable confusion in the regulated community. Industry strongly encourages the MMS to include additional clarifying language in this rulemaking to ensure that the confusion is eliminated.

Proposed Section 253.14 directs that the worst case oil spill discharge volume be derived from specified rules concerning preparation of oil spill response plans. For facilities located seaward of the coastline, the applicable rule is 30 CFR 254. The confusion arises because 30 CFR § 254.47 directs the operator to calculate the volume of a worst-case discharge “scenario”, and to discuss *in the spill-response plan* “how to respond to this well flowing for 30 days”. The regulatory wording may confuse a person referring to Part 254 *only for the purpose* of calculating OSFR worst-case spill response volume, and cause that person *incorrectly* to use the cumulative sum of oil spilled for 30 days. That calculation would be incorrect because MMS has stated verbally on several occasions that the operator should factor in how much oil is recovered, or otherwise accounted for, in calculating the worst case discharge. In other words, in calculating the

worst-case discharge for OSFR purposes, operators *should not* look at the cumulative amount discharged for the entire 30 day period.

Industry has previously recommended that MMS provide examples to demonstrate how the worst-case figure is calculated. However, the MMS did not include these examples in the proposal, and questions from operators have persisted.³ Based on this, Industry again strongly urges the MMS to furnish clarifying language, including one or more examples. Industry would prefer that the clarifying material be included in the regulation itself, but if that is not possible, it should go in the preamble to the final rule.

Industry submits that, as an example of such clarifying material, Figure 1 of these comments could be used to assist an operator in calculating the worst case discharge for each facility. Utilizing the process shown in this diagram for each facility, the operator could then select the highest worst case oil spill discharge volume, and thereafter determine, from Section 253.13, Table (b), the amount of necessary coverage.

From the diagram in Figure 1, the following different scenarios could be derived:

- If the operator has on-site, at the end of the first day of a spill event, equipment with a de-rated capacity of at least 7,000 bbls, and has recovered all of the released oil, then

³ API understands that the MMS has apparently decided to issue a Notice to Lessee (NTL) on this subject, but operators have not seen a draft of the NTL and do not know whether it will provide the needed clarification if and when it is issued. In addition, the regulations found in 30 CFR 254 are not applicable to certain operators who must demonstrate OSFR under this proposal, including those with facilities located in inland waters. Also, operators with facilities in inland waters are not routinely regulated by the MMS and will not have access to and/or will be unaware of MMS NTLs.

the worst case discharge volume would be calculated as **7,000 bbls** (i.e., 5000 from tanks, 1000 from pipelines, and 1000 from the well.)

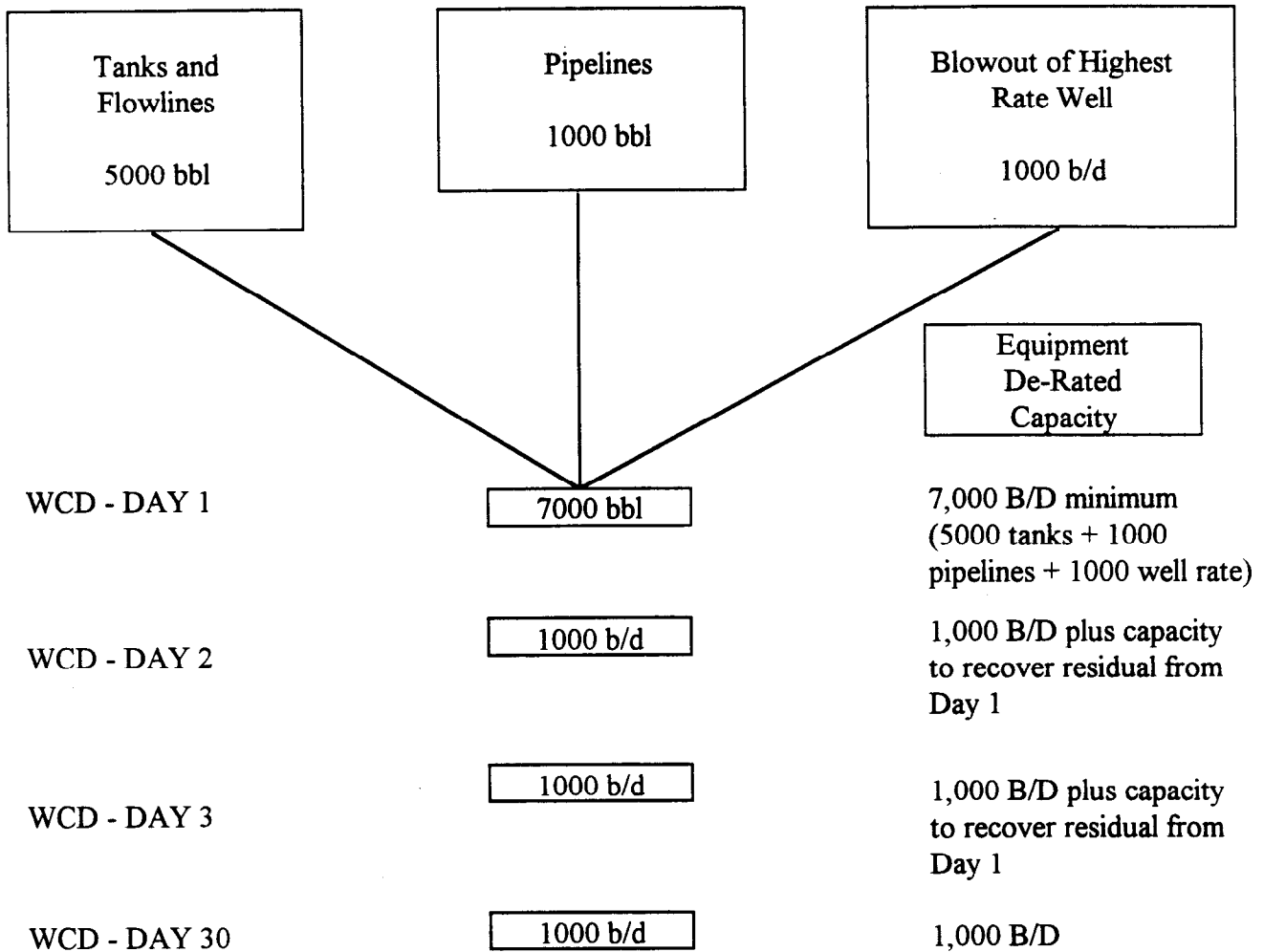
- If the operator has on-site, at the end of the first day of the spill event, equipment to recover 10,000 bbls/day — but does not begin recovery until early on the second day — the worst case discharge would be **8,000 bbls**. (i.e., 5000 from tanks, 1000 from pipelines, and 2000 from the two days' flow from the well; releases from the tanks and pipelines being recognized as one-time instantaneous discharges). This calculation presumes that the operator will continue thereafter to recover, on a daily basis, the 1,000 bbls/day that presumably may still flow from the well.

Utilizing examples such as these, operators will be able to understand that, while they have to examine a 30-day spill event scenario, they are not required to add up the volume of oil discharged over the entire 30 days.⁴ In addition, Industry submits that the MMS should allow the operator to discount, in the above scenarios, volumes of oil which otherwise evaporate naturally, or are handled by authorized dispersants.

Finally, when an operator has a lease with no prior production, but an exploratory well is being drilled from a rig on the lease, the operator in calculating a worst case discharge amount should be allowed to base the “daily well blowout rate” on analog data derived from the operator’s experience, or from the operator’s expectations for the well. In addition, an operator could also select a reservoir/drilling consultant to assist it in determining the well rate.

⁴ For example, using the same data contained in Figure 1, an operator could mistakenly calculate the “worst case discharge volume” as 36,000 barrels (i.e., 5000 from tanks + 1000 from pipelines + (30 x 1000) daily flow from well.) This calculation is wrong because it fails to recognize that the operator would be recovering oil as soon as the cleanup equipment detailed in the response plan is employed.

Figure 1
Worst Case Discharge ("WCD")
Platform Facility



NOTE: The spill response equipment de-rated capacity will need to be sufficient to recover the 1st day's release plus the daily volume released on subsequent days until additional equipment arrives on site and begins recovering oil. As the initial WCD volume is recovered and the daily release rate from a blowout is stabilized, the equipment de-rated capacity could be reduced.

5. The MMS Should Tie the Effective Date of Part 253 to the Biannual Update of the Part 254 Oil Spill Response Plan: Sections 253.14; 253.44

Proposed Section 253.14 would require parties to calculate the amount of OSFR by examining the worst case oil spill discharge volume that is derived from other regulations. Industry will now show that the effective date of these OSFR proposed regulations should be coordinated with the requirements of the cross-referenced oil-spill regulations to avoid unnecessary, premature and duplicative work by the regulated community.

Proposed Section 253.14 provides:

(a) To calculate the amount of OSFR you must demonstrate for a facility under § 253.13(b), you must use the worst case oil-spill discharge volume that you determined under whichever of the following regulations applies:

(1) 30 CFR part 254-Response Plans for Facilities Located Seaward of the Coast Line;

(2) 40 CFR part 112-Oil Pollution Prevention; or

(3) 49 CFR part 194-Response Plans for Onshore Oil Pipelines.”

Unless the MMS coordinates the effective date of this rule with the requirements of the cross-referenced rule, the regulated community will be unnecessarily burdened. For example, under 30 CFR Part 254, operators are required to submit updated facility response plans every two years. If an operator’s response plan (prepared under earlier regulations) required updating before June 23, 1997, the effective date of Part 254, then that operator is not required to submit an updated facility response plan meeting the requirements of Part 254 until the next biannual